



THE APPEAL COMMISSION

THE WORKERS COMPENSATION  
ACT OF MANITOBA

# 2008

Appeal Commission *and*  
Medical Review Panel

ANNUAL REPORT




## Letter to the Minister

**The Honourable Nancy Allan**  
**Minister Responsible for *The Workers Compensation Act***  
**Room 317, Legislative Building**  
**Winnipeg, Manitoba**  
**R3C 0V8**

Dear Minister:

I am pleased to present our 2008 Annual Report in accordance with the provisions of *The Workers Compensation Act*. This report covers the twelve month period from January 1, 2008 to December 31, 2008.

Respectfully submitted,



Lindy Choy  
Acting Chief Appeal Commissioner

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# Introduction

This report outlines the activities and statistics for both the Appeal Commission and Medical Review Panels for the period January 1, 2008 to December 31, 2008 inclusive.

The Appeal Commission is the final level of decision-making in the workers compensation appeal structure in Manitoba. The Appeal Commission has exclusive jurisdiction to hear and decide appeals that arise from decisions made by the Workers Compensation Board (WCB). The Appeal Commission is separate and independent from the WCB, ensuring that issues from workers and employers are heard by an impartial panel.



The Appeal Commission consists of full and part-time appeal commissioners who are appointed by the Lieutenant Governor in Council for specific terms.

Medical Review Panels are established under *The Workers Compensation Act* (the Act) as a separate and independent process from the WCB and the Appeal Commission. Medical Review Panels allow questions to be asked of an independent panel of medical experts and an impartial medical opinion obtained on a worker's claim. The findings of a Medical Review Panel are considered evidentiary in nature and are not binding upon the WCB or Appeal Commission.

The Minister responsible for the Act appoints the Medical Review Panel Chair and Alternate Chair. The independence of the Chairs, and the ability of the employer and worker to select physicians who have not previously treated the worker to sit on a panel, allows for an impartial medical opinion.

The Office of the Registrar is responsible for providing administrative support to both the Appeal Commission and Medical Review Panels.

# Mission and Values

## MISSION STATEMENT

To ensure workers and employers continue to receive a full and impartial hearing of appeals in accordance with fairness and the rules of natural justice and that decisions of the Appeal Commission are a fair reflection of the facts of the case and the governing legislation.

## VALUES

### Quality Assurance

The Appeal Commission maintains a consistent and high level of professional conduct, knowledgeable decision-making, and accountability, while respecting differing and shared values and perspectives.



### Public Integrity

The Appeal Commission is, and is seen to be, an independent body with integrity and a rational decision-making process.

### Responsive to Change

The Appeal Commission evolves in a proactive and creative manner by assuring a process of consultation and consensus around desired change.

### Interdependence

All appeal commissioners are committed to a high standard of professionalism in their duties to conduct fair and impartial hearings under *The Workers Compensation Act* and its regulations. As well as their individual responsibilities to become knowledgeable in the matters before them, the commissioners have individual and collective responsibilities to one another to ensure an atmosphere of mutual respect, tolerance of individual differences and opinions, freedom from pre-determined bias and a commitment to look for objective truth and sound decision-making.

### Respectful Work Environment

Appeal commissioners interact with staff and colleagues in a manner which promotes mutual respect as well as clarity and understanding of respective roles.

## A Message from the Acting Chief Appeal Commissioner

As Acting Chief Appeal Commissioner, I am pleased to present the Annual Report of the Appeal Commission for 2008.

2008 was my first year as an appeal commissioner and it was a new and exciting experience for me. As a newcomer, I was not sure what to expect. I'd like to share some of my observations gained over the past year:

- The Appeal Commission is truly dedicated to ensuring that all parties to an appeal receive a full and impartial hearing.
- An enormous amount of time and effort goes into each appeal which comes before the Appeal Commission. The staff of the Office of the Registrar is diligent and conscientious and they recognize the importance of the matters which are brought before them.
- There is a commitment to providing a high level of service. Detailed statistics are maintained so that measurable results can be accurately monitored.
- Proper attention is devoted towards maintaining competencies. We attend in-house seminars as well as professional development conferences to stay abreast of medical and legal issues affecting the area of workers compensation.
- The appeal commissioners work very hard to be aware of all aspects of a case before coming to a decision. Our decisions are not reached lightly. We recognize that our determinations can have a significant impact on people's lives.

It is my hope that the people of Manitoba and particularly those who become involved with the Appeal Commission share these observations.

2008 has seen significant change to the Appeal Commission membership, with the introduction of four new part-time commissioners: Christiane Devlin, Julie Gervino, Mark Kernaghan and David Zirk. Margaret Bencharski, Kristin Dangerfield, Ron Koslowsky, Grant Ogonowski, Barrie Simoneau, Mira Thow, Sherri Walsh and Byron Williams were re-appointed. After eight years of outstanding service, Margaret Day has retired as a full-time commissioner, but we are pleased that she will be continuing with the Appeal Commission as a part-time commissioner. We look forward to working with Pete Walker as the new full-time commissioner representative of the worker community. Worker representatives Linda Butler, Bill Leake and Bob Malazdrewich heard their final appeals in 2008. We thank them for their excellent service.

I have appreciated the privilege of working with Alan Scramstad, the Chief Appeal Commissioner and the other appeal commissioners and staff, and I thank all for the support and guidance. Together we have strived to provide timely, fair and just decisions and we will continue in 2009 to do our best to serve the people of Manitoba well.

Sincerely,



Lindy Choy

## About the Appeal Commission

The Appeal Commission was established by legislative amendment to *The Workers Compensation Act* (the Act) in July 1990. The Appeal Commission is the final level of appeal in the workers compensation system. The Appeal Commission operates separately and independently from the WCB and is solely responsible for hearing all appeals from workers and employers concerning WCB Review Office or Assessment Committee decisions.

The full and part-time appeal commissioners are appointed by the Lieutenant Governor in Council for specific terms. The Act requires that the Appeal Commission consist of one or more appeal commissioners representing the public interest, one of whom is designated as Chief Appeal Commissioner, and one or more appeal commissioners representing workers and employers covered under the Act. The Chief Appeal Commissioner is responsible for the operation and conduct of matters relating to the Appeal Commission as established by the Act.

The Appeal Commission's conduct is governed by Regulation 279/91, *Appeal Commission Rules of Procedure*. The Rules of Procedure establish the responsibilities of the Chief Appeal Commissioner, the Registrar and the appeal panels to ensure that the integrity of the appeal system is protected and maintained.

Appeals are heard by panels of three commissioners, representing public, worker and employer interests, respectively. The commissioner representing the public interest is the presiding officer of the panel and is responsible for the conduct of the hearing/review and panel meetings.

Hearings and reviews are conducted in accordance with the rules of natural justice and procedural fairness. All parties to an appeal (i.e. the employer, worker and their representatives) are given an equal opportunity to present their case.

The Appeal Commission is a non-adversarial enquiry forum where parties with a direct interest in a matter provide oral or written evidence. An appeal panel has the ability to ask questions or obtain additional evidence which ensures that the panel has all the information necessary to reach a fair decision.

An appeal panel may hear witnesses from either or both parties and may subpoena witnesses or evidence that will assist the panel in reaching a decision. A party with a direct interest may appear before the panel to provide evidence or in some cases, ask the panel to conduct a review of the file which would not require the attendance of any party.

The Appeal Commission also acts as the final level of appeal for claims from victims of crime filed under the provisions of *The Criminal Injuries Compensation Act* and *The Victims' Bill of Rights*.



# Method of Appeal

Appellants can request a file review or oral hearing; however, the Chief Appeal Commissioner or an appeal panel addressing an appeal have the final authority to determine the most appropriate method for an appeal.

## FILE REVIEW

An appeal can be decided by a file review if all the issues are easy to understand based on the file documents. The panel reaches a decision after it conducts a full review of the file documentation and any evidence submitted in writing by the parties with a direct interest. If an appeal is decided by a file review, interested parties do not have to appear in person before the appeal panel.

Some examples of appeals commonly decided by file review include:

- most assessment appeals
- factual matters such as the level of average earnings
- applications for an increase in permanent partial impairment where no wage loss is involved
- payment of medical aid/travel expenses
- appeals where the facts of the case are not in dispute

## ORAL HEARING

Oral hearings are the most common appeal forums, and they are where the more complex appeals are usually decided. The party requesting the hearing must appear in person to present the appeal to the panel verbally, although the appeal can be supported by a written submission. In some instances, a party may be allowed to participate via teleconference. Witnesses may attend in support of the appeal, so long as the Appeal Commission is advised in advance that they will be attending.

Some examples of appeals decided by an oral hearing are:

- where additional evidence is to be presented
- where there is a fatality
- where serious injury has occurred
- where an occupational disease is involved
- where the decision may have an important impact on how WCB policy is interpreted or applied
- where the facts are in dispute



# General Hearing/Review Information

- Hearings and reviews are scheduled as soon as the parties are ready to proceed.
- A worker's or an employer's access to file information is subject to certain restrictions contained in the Act. File access generally takes up to six weeks, but can be longer if objections to the release of information are received.
- Any evidence concerning an appeal must be provided to the Appeal Commission at least five business days before the review or hearing.
- A decision will be made within 60 days of the completion of the hearing or review.

## AFTER AN APPEAL

The Appeal Commission cannot clarify or change its decision once it has been made, except to correct typographical errors. The panel is unable to provide any further reasons or explanations for its decision, and cannot consider further arguments or submissions by the parties.

Once a decision has been made, there are limited remedies available to the parties under the Act. These remedies are:

1. Under Section 60.9 of the Act, if a party thinks the panel has acted outside its authority or has erred in applying the Act, regulations or WCB policy, the party can approach the Board of Directors of the WCB and ask them to review the decision. The party must identify the error made by the panel. Should the Board of Directors consider that an error has been made, they may order that the appeal be re-heard.
2. Under Section 60.10 of the Act, if a party has new evidence which is substantial and material to the decision, they may apply to the Chief Appeal Commissioner and request reconsideration of the decision. The information must not have existed at the time of the original hearing, or been known to the applicant and also could not have been discovered through the exercise of due diligence. If the Chief Appeal Commissioner decides that the evidence meets the reconsideration provisions of the Act, a new hearing on the matter will be ordered. The Chief Appeal Commissioner is unable to consider further arguments about the evidence that was before the original panel.



# The Appeal Commissioners

## THE FULL-TIME APPEAL COMMISSIONERS

The Chief Appeal Commissioner and full and part-time commissioners representing workers, employers and the public interest are appointed by the Lieutenant Governor in Council.

As at December 31, 2008, there were four full-time commissioners:

Lindy Choy, Presiding Officer (Public Interest)  
Margaret Day, Appeal Commissioner (Workers)  
Allan Finkel, Appeal Commissioner (Employers)  
Alan Scramstad, Chief Appeal Commissioner (Public Interest)

## THE PART-TIME APPEAL COMMISSIONERS

As at December 31, 2008, the Appeal Commission had twelve part-time appeal commissioners, four representing the public interest, three representing workers and five representing employers. The services of the part-time commissioners are used when full-time commissioners are in conflict on a case, for vacation relief, when workloads increase, and to maintain their level of expertise.

### **PUBLIC INTEREST**

Kristin Dangerfield  
Mira Thow  
Sherri Walsh  
Byron Williams

### **REPRESENTING WORKERS**

Mark Kernaghan  
Grant Ogonowski  
David Zirk

### **REPRESENTING EMPLOYERS**

Margaret Bencharski  
Christiane Devlin  
Julie Gervino  
Ron Koslowsky  
Barrie Simoneau

Bob Malazdrewich heard his last case after 16 years as a commissioner representing workers.

Bill Leake heard his last case after 12 years as a commissioner representing workers.

Linda Butler heard her last case after 8 years as a commissioner representing workers.



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<b>PUBLIC INTEREST</b>	<b>REPRESENTING WORKERS</b>	<b>REPRESENTING EMPLOYERS</b>
Kristin Dangerfield	Mark Kernaghan	Margaret Bencharski
Mira Thow	Grant Ogonowski	Christiane Devlin
Sherri Walsh	David Zirk	Julie Gervino
Byron Williams		Ron Koslowsky
		Barrie Simoneau

Bob Malazdrewich heard his last case after 16 years as a commissioner representing workers.

Bill Leake heard his last case after 12 years as a commissioner representing workers.

Linda Butler heard her last case after 8 years as a commissioner representing workers.

## Highlights

- Alan Scramstad, Chief Appeal Commissioner, and Peter J. Wiebe, Registrar, continued to serve as members of the Board of Directors of the Manitoba Council of Administrative Tribunals (MCAT). Alan continued to act as President of MCAT.
- Peter J. Wiebe, Registrar, and Byron Williams, part-time commissioner representing the public interest, were panelists on the workshop "Tribunal Accessibility Prior to a Hearing" at MCAT's 3rd Annual Conference.
- Alan Scramstad, Chief Appeal Commissioner, and Byron Williams, part-time commissioner representing the public interest, were guest lecturers at the University of Manitoba Faculty of Law's Clinical Administrative Law class.
- Our brochure, *What You Need To Know Before Making An Appeal*, was rewritten and republished.
- The Appeal Commission finalized and implemented its procedures under *The Public Interest Disclosure (Whistleblower Protection) Act*.

## Commissioner Workshops (continuing education)

Full and part-time appeal commissioners attend workshops throughout the year on topics related to workers compensation and administrative tribunals. As part of their training, workshops were held in 2008 on:

- Ankle Sprains & Common Conditions of the Foot
- Low Back Pain
- Tendonitis
- Skeletal Overview
- Musculoskeletal Injections
- Workers Compensation Board Special Investigations

In addition to the above workshops, commissioners participated in the following external training:

- Manitoba Council of Administrative Tribunals sessions:
  - 3rd Annual Conference
  - Recent Supreme Court of Canada Decisions: Reading Between the Lines
- Council of Canadian Administrative Tribunals conference:
  - Serving a Diverse Population
- Canadian Bar Association conference:
  - Beyond the Horizon: The Expanding and Overlapping Jurisdictions of Arbitrators & Tribunals

## Disclosures under *The Public Interest Disclosure (Whistleblower Protection) Act*

There were no disclosures received in 2008.

# Appeal Commission Statistics

## WORKERS COMPENSATION STATISTICS

<b>TOTAL APPEALS</b>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Appeals carried forward from previous year	28	41	32
Hearings held (by appeal)	135	130	168
Reviews held (by appeal)	38	34	51
Cases in process	[29]	[28]	[41]
Cases adjourned	[4]	[5]	[5]
<b>TOTAL APPEALS DECIDED</b>	<b>168</b>	<b>172</b>	<b>205</b>
Appeals accepted	46	57	46
Appeals partially accepted	16	19	19
Appeals not accepted	106	96	140
<b>TOTAL APPEALS DECIDED</b>	<b>168</b>	<b>172</b>	<b>205</b>
Percentage accepted	27.4%	33.1%	22.4%
Percentage partially accepted	9.5%	11.1%	9.3%
Percentage not accepted	63.1%	55.8%	68.3%

<b>POST HEARING ACTIVITIES</b> <i>(cases in process)</i>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Cases awaiting further information requested by the panel	6	4	13
Cases awaiting decision	4	1	6
Decision writing	19	23	22
<b>TOTAL</b>	<b>29</b>	<b>28</b>	<b>41</b>



<b>TOTAL WORKER APPEALS</b>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Appeals accepted	40	54	43
Appeals partially accepted	16	19	19
Appeals not accepted	92	81	129
<b>TOTAL</b>	<b>148</b>	<b>154</b>	<b>191</b>
Percentage accepted	27.0%	35.1%	22.5%
Percentage partially accepted	10.8%	12.3%	10.0%
Percentage not accepted	62.2%	52.6%	67.5%

**Number of workers represented by:**

Legal Counsel	11	13	12
Union Representative	17	20	25
Worker Advisor	52	49	83
Advocate	9	14	14
Self Representation	56	51	54
Other	3	7	3

<b>WORKER APPEALS TO CLAIM/REHABILITATION ISSUES</b>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Appeals accepted	40	54	43
Appeals partially accepted	16	19	19
Appeals not accepted	92	80	128
<b>TOTAL</b>	<b>148</b>	<b>153</b>	<b>190</b>
Percentage accepted	27.0%	35.3%	22.6%
Percentage partially accepted	10.8%	12.4%	10.0%
Percentage not accepted	62.2%	52.3%	67.4%

<b>WORKER APPEALS TO ASSESSMENT ISSUES</b>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Appeals accepted	0	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	0	1	1
<b>TOTAL</b>	<b>0</b>	<b>1</b>	<b>1</b>
Percentage accepted	0%	0%	0%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	0%	100%	100%



<b>TOTAL EMPLOYER APPEALS</b>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Appeals accepted	6	2	3
Appeals partially accepted	0	0	0
Appeals not accepted	14	15	11
<b>TOTAL</b>	<b>20</b>	<b>17</b>	<b>14</b>
Percentage accepted	30.0%	11.8%	21.4%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	70.0%	88.2%	78.6%

**Number of employers represented by:**

Legal Counsel	1	0	1
Advocate	11	3	3
Employer Agent	5	12	9
Self Representation	3	2	1

<b>EMPLOYER APPEALS TO CLAIM/REHABILITATION ISSUES</b>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Appeals accepted	6	1	2
Appeals partially accepted	0	0	0
Appeals not accepted	13	11	9
<b>TOTAL</b>	<b>19</b>	<b>12</b>	<b>11</b>
Percentage accepted	31.6%	8.3%	18.2%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	68.4%	91.7%	81.8%

<b>EMPLOYER APPEALS TO ASSESSMENT ISSUES</b>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Appeals accepted	0	1	1
Appeals partially accepted	0	0	0
Appeals not accepted	1	4	2
<b>TOTAL</b>	<b>1</b>	<b>5</b>	<b>3</b>
Percentage accepted	0%	20.0%	33.3%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	100%	80.0%	66.7%

<b>TOTAL THIRD PARTY APPEALS</b>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Appeals accepted	0	1	0
Appeals partially accepted	0	0	0
Appeals not accepted	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>1</b>	<b>0</b>
Percentage accepted	0%	100%	0%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	0%	0%	0%
<b><i>Number of third parties represented by:</i></b>			
Legal Counsel	0	1	0
Union Representative	0	0	0
Worker Advisor	0	0	0
Advocate	0	0	0
Self Representation	0	0	0
Other	0	0	0

CASE TYPE CLAIM	YEAR ENDING 2008	YEAR ENDING 2007	YEAR ENDING 2006
Appeals accepted	43	49	43
Appeals partially accepted	11	15	16
Appeals not accepted	88	83	126
<b>TOTAL</b>	<b>142</b>	<b>147</b>	<b>185</b>
Percentage accepted	30.3%	33.3%	23.2%
Percentage partially accepted	7.7%	10.2%	8.7%
Percentage not accepted	62.0%	56.5%	68.1%

CASE TYPE REHABILITATION	YEAR ENDING 2008	YEAR ENDING 2007	YEAR ENDING 2006
Appeals accepted	3	7	2
Appeals partially accepted	5	4	3
Appeals not accepted	17	8	11
<b>TOTAL</b>	<b>25</b>	<b>19</b>	<b>16</b>
Percentage accepted	12.0%	36.8%	12.4%
Percentage partially accepted	20.0%	21.1%	18.8%
Percentage not accepted	68.0%	42.1%	68.8%

CASE TYPE ASSESSMENT	YEAR ENDING 2008	YEAR ENDING 2007	YEAR ENDING 2006
Appeals accepted	0	1	1
Appeals partially accepted	0	0	0
Appeals not accepted	1	5	3
<b>TOTAL</b>	<b>1</b>	<b>6</b>	<b>4</b>
Percentage accepted	0%	16.7%	25.0%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	100%	83.3%	75.0%
<b>TOTAL CASES DECIDED</b>	<b>168</b>	<b>172</b>	<b>205</b>

<b>MOST COMMON ISSUES ADDRESSED</b>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Entitlement to wage loss benefits (post-1992)	60	71	72
Claim acceptance	52	42	57
Entitlement to medical aid payment	19	21	26
Mitigation	14	9	5
Is present condition related to the compensable injury	11	22	42
Deeming process	10	6	7
Entitlement to an increase in the permanent partial impairment award	6	4	3
Entitlement to a permanent partial impairment award	5	1	3
Request for Medical Review Panel	5	6	8
Has the wage loss benefit been correctly calculated	5	2	1
Was the vocational rehabilitation plan appropriate	5	5	6
Average earnings policy	4	1	4
Entitlement to temporary total disability benefits (pre-1992)	4	2	3
Discretionary rehabilitation expense	3	3	6
Is the employer entitled to cost relief	3	2	1
Effective date of the permanent partial impairment award	3	1	1
Has worker been overpaid benefits	3	5	1
Is worker to reimburse the WCB for overpayment of benefits	2	6	1
Should collateral benefit be deducted	2	0	0
Is worker entitled to vocational rehabilitation services (retraining)	2	4	1
Has the permanent partial impairment award been correctly calculated	2	2	2
Other issues	18	39	64
<b>TOTAL ISSUES ADDRESSED</b>	<b>238</b>	<b>254</b>	<b>314</b>

<b>RECONSIDERATIONS UNDER SECTION 60.10 OF THE ACT</b>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Number of requests decided	11	21	19
Reconsiderations granted	2	3	5
Referred back to the WCB to address new issues identified by the Chief Appeal Commissioner/designate	0	0	0

<b>FILE ACCESS APPEALS</b>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Worker appeals	9	3	8
Employer appeals	1	1	4
<b>TOTAL FILE ACCESS APPEALS</b>	<b>10</b>	<b>4</b>	<b>12</b>

### CRIMINAL INJURIES/VICTIMS' RIGHTS STATISTICS

<b>TOTAL APPEALS</b>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Appeals accepted	0	0	1
Appeals partially accepted	0	1	0
Appeals not accepted	2	7	5
<b>TOTAL</b>	<b>2</b>	<b>8</b>	<b>6</b>
Percentage accepted	0%	0%	16.7%
Percentage partially accepted	0%	12.5%	0%
Percentage not accepted	100%	87.5%	83.3%

## Service Levels

The Service Level Report was instituted in 1997. This tracking system allows the Office of the Registrar to review the time it takes an appeal to move through the appeal process. Service levels are reviewed at various stages of the appeal process to identify delays and to determine if administrative improvements can be made.



The Appeal Commission personally contacts all interested parties with respect to the scheduling of hearings. Historically, the Appeal Commission has been able to schedule a hearing or review within six weeks of receiving an appeal. It is found, however, that this does not allow sufficient time for the parties to fully prepare.

According to Regulation 279/91, *Appeal Commission Rules of Procedure*, an appeal panel must publish its decision within 60 days following the conclusion of a hearing. A hearing is considered to have concluded once the panel obtains the necessary information to allow it to make a decision.

<b>SERVICE LEVEL STATISTICS</b> (Based on decisions published as at December 31, 2008)	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Average time from date appeal received to date of hearing	14.83 wks	12.42 wks	16.46 wks
Average time from hearing date to decision published	8.61 wks	11.36 wks	9.62 wks
[Average time from date of decision to decision published]	[5.11 wks]	[6.58 wks]	[6.91 wks]
<b>AVERAGE TIME FROM DATE APPEAL RECEIVED TO DECISION PUBLISHED*</b>	<b>23.44 wks</b>	<b>23.78 wks</b>	<b>26.08 wks</b>

\*Includes all cases where the panel did not make a decision immediately after the hearing/review due to a request for additional information.



## About Medical Review Panels

Medical Review Panels enable the WCB or Appeal Commission to obtain impartial, independent advice on medical matters that affect a worker's right to compensation.

Subsection 67(3) of the Act allows the WCB or Appeal Commission the discretion to refer a medical matter to a Medical Review Panel for an independent opinion. This may occur when a claim is fairly complex and an independent expert opinion is required.

Subsection 67(4) of the Act establishes the right of an injured worker to a Medical Review Panel if there is a difference of opinion on a medical matter between the worker's physician and a WCB medical advisor and this difference affects the worker's entitlement to compensation. A Medical Review Panel must be convened if a difference of opinion, as defined by subsection 67(1) of the Act, exists.

Subsection 67(4.1) of the Act provides that an employer may request that the WCB refer a medical matter to a Medical Review Panel for its opinion. The medical matter must be real and substantial and affect entitlement to compensation.

A Medical Review Panel is comprised of a Chairperson and two panel members. The Minister responsible for the Act appoints the Chairperson and the Alternate Chairperson. The worker and employer select the other two panel members from a list of physicians, provided by the College of Physicians and Surgeons, who specialize in the matter under consideration. In addition, specialist consultants in other fields may be invited to attend and assist the panel.

Physicians who have treated the worker, who examine workers on behalf of the employer, or who have acted as consultants in the treatment of the worker are not eligible to serve on the Medical Review Panel.

The independent nature of the Medical Review Panel process ensures that the medical advice obtained is impartial and is based upon the facts of the case as documented on file and as discovered through the process.

The findings of a Medical Review Panel are considered evidentiary in nature and are not binding upon the WCB or the Appeal Commission.

The Chairperson of Medical Review Panels is Dr. Gary Beazley. The Alternate Chairperson is Dr. Mallory Fast.



# Medical Review Panel Statistics

MEDICAL REVIEW PANELS (MRPs)	YEAR ENDING 2008	YEAR ENDING 2007	YEAR ENDING 2006
Total MRPs convened	8	11	5
MRPs awaiting scheduling	0	3	2
<b>INITIATED BY:</b>			
Primary Adjudication	8	6	1
Review Office	0	2	1
Appeal Commission	0	3	3
<b>CONVENED UNDER:</b>			
Subsection 67(3)	1	3	3
Subsection 67(4)	7	8	2
Subsection 67(4.1)	0	0	0

MEDICAL REVIEW PANELS CONVENED BY AREA OF MEDICAL SPECIALTY	YEAR ENDING 2008	YEAR ENDING 2007	YEAR ENDING 2006
Orthopaedic Surgery	5	9	5
Physical Medicine & Rehabilitation	2	1	0
Psychiatry	1	1	0
<b>TOTAL</b>	<b>8</b>	<b>11</b>	<b>5</b>

## Service Levels

The convening of a Medical Review Panel is a complex process where a panel of specialists and consultants are brought together on a specific day to meet, examine a worker and answer questions placed to them. This involves arranging a time convenient to all parties, the preparation of documents and the publishing of the Medical Review Panel findings.



<b>MEDICAL REVIEW PANEL SERVICE LEVEL STATISTICS</b>	<b>YEAR ENDING 2008</b>	<b>YEAR ENDING 2007</b>	<b>YEAR ENDING 2006</b>
Average time from date of request to date MRP held	19.47 wks	17.80 wks	27.29 wks
Average time from date of MRP to date report is published	4.23 wks	4.25 wks	4.74 wks
<b>AVERAGE TIME FROM DATE OF REQUEST TO DATE REPORT IS PUBLISHED</b>	<b>23.70 wks</b>	<b>22.05 wks</b>	<b>32.03 wks</b>



2008

Appeal Commission *and*  
Medical Review Panel

ANNUAL REPORT



THE APPEAL COMMISSION

THE WORKERS COMPENSATION  
ACT OF MANITOBA

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